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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,873	11/14/2003	Kenneth S. Solovay	07086-1-005000	1881
35996 7590 02/22/2010 Darby & Darby (Michael J. Keller) P.O. Box 770 Church Street Station New York, NY 10008-0770				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
02/22/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/713,873

**Applicant(s)**

SOLOVAY ET AL.

**Examiner**

Vy Q. Bui

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/2/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/55/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the at least one support rail element" in line 5. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Borghi- US 5,938,695.

As to claims 1-12, Borghi -'695 (for example: Figs. 1-4, 6-7: C 4, L 23-39) discloses a biocompatible stent including (tubular) vessel support elements 4 or 6 having aperture (lumen) therethrough to receive support rail elements 5 having curved end sections ( F 4, for example) extending beyond the ends of vessel support elements 4, elongated sections defined between a pair of two curved end sections substantially as recited in the claims.

Please refer to the reproduced sheet 1 of 5 of U.S. Pat. 5,938,695 on next page for indication of the limitations recited in the claims.

U.S. Patent

support rail  
element 5

Sheet 1 of 5

5,938,695

FIG. 1

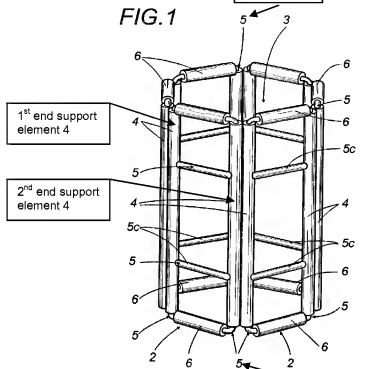


FIG. 3

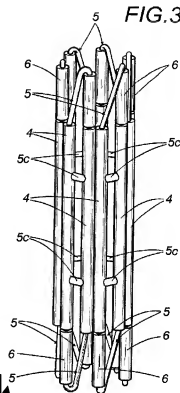


FIG. 2

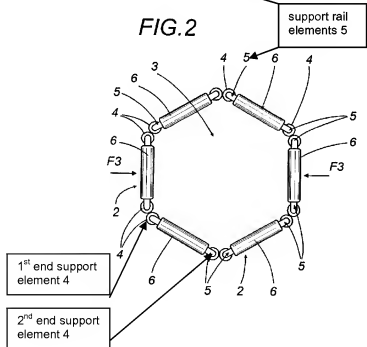
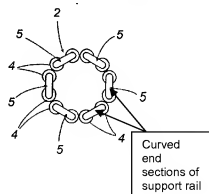


FIG. 4



***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borghi- US 5,938,695 in view of Das- 5,554,181.

As to claims 13-14, Borghi- US 5,938,695 (Figs. 1-4, for example) discloses substantially the claimed invention, except for an agent/coating of an agent for delivery to the body of a patient. However, Das- 5554181 (col. 8, lines 16-25) discloses a stent can be coated with a substance such as heparin, fibrin for delivery to a body for a treatment purpose. It would have been obvious to one of ordinary skill in the art to coat Maass-'181 stent as taught by Das- 5554181 for delivery an agent to a body for a treatment purpose.

2. Claims 13-15, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borghi- US 5,938,695 in view of Steinke-6,224,626 B1.

As to claims 13-15, 18, Borghi- US 5,938,695 (Figs. 1-4, for example) discloses substantially the claimed invention, except for agents/coatings for delivery to the body of a patient. However, Steinke-6,224,626 (col. 10, lines 8-33) discloses a stent can be coated with various materials/agents/coatings. It would have been obvious to one of ordinary skill in the art to coat Borghi- US 5,938,695 stent with various coatings/agents/materials as taught by Steinke-6,224,626 for delivery agents to treat a blood vessel.

Art Unit: 3773

***Allowable Subject Matter***

Claims 16-17 and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

The Applicant's arguments have been carefully considered. However, the claims do not define the invention over the applied prior art as asserted above. The prosecution of the case has been reopened with this non-final office action for the Applicant a second chance to review the previous rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773